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File No. O. Tr. of Pty/45

Legal Department—

A **BRANCH**

Subject:—

opinions under the Transfer of Property Act

File No. O. Tr. of Pty/45

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C O N T E N T S.

Legal Department File No. O. Tr. of Property / 1945.

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		The Transfer of Property Act.	
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2.	19.3.45.	Clause (h) - sec. 108.- Whether Government would be entitled on termination of lease either to the removal of the door or to obtain compensation for the value thereof if it is allowed to remain for the benefit of the lessor.	3 - 4.
3.	7010 14.8.45 / 7373 -A 6.10.45.	Sec. 108(e).- Whether a tenant who discontinued payment of rent would have any claim to being allotted the premises of which he was in possession before destruction.-	5 - 6.

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Office of the R.L.A.

The Transfer of Property Act refers to mortgages of immoveable property and the Indian Contract Act refers to pledges of m moveable property. But neither Act deals with mortgages of moveable property. A mortgage of moveable property is entitled to a decree for sale just as much as a mortgagee of immoveable (see Mulla's Transfer of Property Act p.357); and some of the general principles applicable to mortgages of immoveable property apply to mortgages of moveable property. A sub-mortgage is only good to the extent of the amount due on the mortgage and the payment of the mortgage debt extinguishes the sub-mortgagee's security (ibid p. 355). In the present case it appears that there was a tripartite agreement on 15-7-1939 whereby the amount due to Mr. Ursekar from Mr. Deshpande under the mortgage was settled at Rs.6253-9-9 which Mr. Deshpande agreed to pay to the sub-mortgagee, the Bombay Daxini Brahmin Co-operative Bank. Mr. Deshpande accordingly paid the amount to the Bank whereupon the sub-mortgagee's security was extinguished and the mortgagee's (Mr. Ursekar's) dues were indirectly paid and Mr. Deshpande became entitled to claim possession of the mortgaged property. Consequently the delivery of possession of the mortgaged property to Mr. Deshpande even without the express ~~m~~ consent of Mr. Ursekar was lawful.

Sd/- P.N.M.
23/2/45.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 1558, dated the 23rd February 1945.

4-Cs.

M.V.V.
10/7.

Office of the R.L.A.

Clause (h) of section 108 of the Transfer of Property Act provides : "In the absence of a contract or local usage to the contrary the ~~x~~ lessee may even after the determination of the lease remove at any time whilst he is in possession of the property leased but not afterwards all things which he has attached to the earth: provided he leaves the property in the state in which he received it". In Paramanick's case a Full Bench of the Calcutta High Court observed: "We think it should be laid down as a general rule that, if he who makes the improvement is not a mere trespasser, but is in possession under any bonafide title or claim of title, he is entitled either to remove the materials, restoring the land to the state in which it was before the improvement was made or to obtain compensation for the value of the building or allowing the removal of material, remaining with the owner of the land in those cases in which the building is not taken down by the builder during the continuance of any estate he may possess". (See Mulla's Transfer of Property Act, page ~~x~~ 610). Although there is no deed in the present case it appears from the fact that partitions were fixed by Government after taking the building on lease that there is no agreement prohibiting the attachment of ~~xx~~ fixtures to the building. If so, there can be no valid objection to Government fixing a wooden door to the partition and Government would be entitled on termination of lease either to the removal of the door subject to the condition of leaving the property in the state in which it was leased to Government or to obtain compensation for the value thereof if it is allowed to remain for the benefit of the lessor. The contention of the lessor that he can claim it as a fixture is not valid.

Id/- P.N.M.
19/3/45.

Remembrancer of Legal Affairs.

~~x~~ 4-Cs./M.V.V./10.7

R.I.7010/14.8.45. Office of the R.L.A.

The Secretary of the Indian Merchants' Chamber has suggested that "in cases where buildings or tenements reconstructed in the Mandvi area after the explosions of April 1944, landlords should be made to give preference to the old tenants when letting out the reconstructed tenements or buildings". The Rent Controller in para. 2 of the note at page 6 ante observes:-

"As regards suggestion (i) (i.e. the aforesaid suggestion of the Secretary of the Indian Merchant's Chamber), reference is invited to section 108(e) of the Transfer of Property Act from which it willbe seen that the tenancy of a building destroyed by fire shall be void only at the option of the lessee. A tenant who wishes to continue a tenancy and, therefore, to mx retain his right to reoccupy the premises after they have been repaired or rebuilt can do so by continuing to pay the rent even during the period while the premises cannot be used by him. It would, therefore, appear that a tenant who discontinued payment of rent would have no claim to being allotted the premises of which he was in possession before destruction."

The R.L.A., is requested to advise whether the Rent Controller's view is correct.

Clause (e) of section 108 of the Transfer of Property Act provides that if by fire etc. any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was it let, the lease shall at the option of the lessee be void. It is manifest from that provision that leases of tenements destroyed by the explosion of 1944 could be determined at the option of the lessees and that the lessees who desireed to terminate the leases could so do by relinquishment of possession after notice (see Dharamsey v. Ahmedbhai 23 Bom. 15). Mere nonpayment of rent would not amount to relinquishment of possession after notice. Consequently the

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lessees who had not exercised their option under clause (e) of section 108 of the Transfer of Property Act could claim possession of the reconstituted tenements provided they did not dispute their liability to pay rent for the period between the destruction of the tenements and their xx reconstruction. Subject to these observations, the view taken by the Rent Controller is correct.

Sd/- P.N.M.
4/10/45.

Remembrancer of Legal Affairs.

U.R. to G.D. No. 7373-A , dated the 6th October 1945.

4-Cs.

M.V.V.
11/10 7.